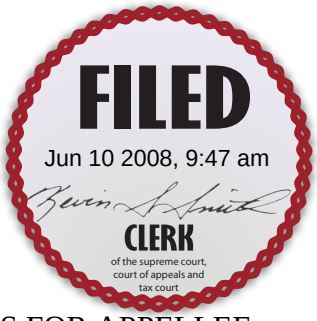

ATTORNEY FOR APPELLANT:

DONALD K. MCCLELLAN
McClellan & McClellan
Muncie, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JOSEPH ROBERT DELAMATER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BRADFORD MULLINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0710-CR-883
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT NO. 1
The Honorable Thomas Newman, Jr., Special Judge
Cause No. 48D01-0212-FB-560

June 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

After pleading guilty to Dealing in a Schedule II Controlled Substance (Methamphetamine),[1] as a class B felony, Bradford Mullins was sentenced to the maximum term of twenty years.[2] On appeal, Mullins argues that the trial court abused its discretion in sentencing him to twenty years and requests that we exercise our authority under Ind. Appellate Rule 7(B) to revise his sentence.

We affirm.

On July 14, 1999, Mullins delivered 2.7 grams of methamphetamine to a drug task force informant. On December 10, 2002, the State charged Mullins with one count of dealing in a schedule II controlled substance as a class B felony. The charge was later amended to a class A felony. A two-day jury trial was held on October 20 and 21, 2004, for which Mullins failed to personally appear. At the conclusion of the evidence, Mullins was found guilty of dealing as a class A felony. The court held a sentencing hearing on December 9, 2004, and again, Mullins failed to appear. The court sentenced Mullins to forty years imprisonment.

On January 11, 2005, Mullins was arrested on criminal charges in Texas and in May 2005, he pleaded guilty to possession to transport chemicals with intent to manufacture methamphetamine, a second-degree felony, and criminal negligence, a third-

[1] Ind. Code Ann. § 35-48-4-1.1 (West, PREMISE through 2007 1st Regular Sess.) (formerly I.C. § 35-48-4-2).

[2] Because the crime was committed in 1999, we apply the sentencing statute then in effect. At that time, Ind. Code Ann. § 35-50-2-5 provided: "A person who commits a Class B felony shall be imprisoned for a fixed term of ten (10) years, with not more than ten (10) years added for aggravating circumstances or not more than four (4) years subtracted for mitigating circumstances."

degree felony. On December 14, 2005, Mullins was remanded to the custody of the Indiana Department of Correction.

On December 18, 2006, Mullins filed a pro se petition for post-conviction relief. On August 20, 2007, the parties submitted a written plea agreement that provided the State would agree to the granting of Mullins's petition for post-conviction relief, thereby vacating his conviction for dealing as a class A felony. The State also agreed to forego prosecution of the A felony charge and, in exchange, Mullins agreed to plead guilty to dealing in a schedule II controlled substance as a class B felony. The parties further agreed that sentencing was left to the discretion of the trial court. The court accepted the terms of the plea agreement.

On September 24, 2007, the trial court held a sentencing hearing. The court identified three aggravating circumstances: (1) Mullins's criminal history consisting of his convictions in Texas; (2) that Mullins absconded during his first jury trial and sentencing in 2004; and (3) that Mullins violated the conditions of his bond. The court discounted the mitigating circumstances proffered by Mullins.[3] The court concluded that the aggravating circumstances greatly outweighed the mitigating circumstances and then sentenced Mullins to the maximum term of twenty years.

Mullins first argues that the trial court abused its discretion in imposing a twenty-year sentence. Sentencing decisions rest within the sound discretion of the trial court and

[3] Mullins had asked the court to consider as mitigating that his crime did not cause injury, that he is not likely to re-offend, that he would respond affirmatively to a short period of incarceration, and that his incarceration would impose undue hardship on his family. Mullins also offered character evidence through testimony and exhibits.

are reviewed on appeal only for an abuse of discretion. *Wilkie v. State*, 813 N.E.2d 794 (Ind. Ct. App. 2004), *trans. denied, overruled on other grounds by Childress v. State*, 848 N.E.2d 1073 (Ind. 2006). An abuse of discretion has occurred if the trial court's decision is against the logic and effect of the facts and circumstances before the court. *Rose v. State*, 810 N.E.2d 361 (Ind. Ct. App. 2004).

Mullins argues that the trial court abused its discretion by considering his criminal history as an aggravating circumstance because he claims that such circumstance is not supported by the record. It is true that Mullins has no juvenile criminal history. Further, at the time of his arrest in the instant case, Mullins had no criminal convictions as an adult.[4] The court, in citing Mullins's criminal history, focused on Mullins's arrest and convictions in Texas. The court explained its consideration of this factor as follows:

> And so, the reason why this is probably an even more heightened aggravating circumstance that [sic] if particular crime in Texas had been committed before the case with which we're dealing here is because it shows similar conduct, dealing with methamphetamines, and it also speaks loudly to the character of the defendant, the type of person he is, and his propensity to commit these types of crimes after being charged with delivery of methamphetamine in Madison County, he goes to Texas and apparently even commits a more egregious crime involving methamphetamine in that he was transporting chemicals that is [sic] used to manufacture methamphetamines.

[4] Mullins's record includes arrests in South San Diego, California in 1990 and 1994. The charges in the 1990 incident were dismissed almost immediately for "lack of corpus" and the charges in the 1994 incident were "released". *Appendix* at 249. The trial court did not reference these prior arrests as part of its sentencing statement, thus indicating that the court did not consider them in deciding what sentence to impose.

Transcript at 65-66.[5] Citing *Shaffer v. State*, 856 N.E.2d 752 (Ind. Ct. App. 2006), *trans. denied*, Mullins argues that his convictions in Texas could not be considered as criminal history because those convictions occurred after he committed the instant offense.

The circumstances presented here are somewhat unusual. The Texas convictions occurred after Mullins's first conviction and sentence were handed down in Indiana but prior to the ultimate conviction and sentence entered in this cause by virtue of the fact that the granting of Mullins's petition for post-conviction relief, as agreed to by the State, vacated the first conviction and sentence. In any event, we cannot say that the trial court abused its discretion in considering the Texas convictions as an aggravating circumstance. The trial court explained that it considered his Texas convictions as negatively reflecting on his character and as indicative of his propensity to commit similar crimes. These are proper considerations for the trial court in deciding what sentence to impose, regardless of the timing of when the Texas convictions were entered. We therefore conclude that the trial court did not abuse its discretion in considering Mullins's criminal convictions in Texas as an aggravating circumstance. *See id*.

Mullins also argues that it was improper for the trial court to consider the fact that he absconded during his jury trial and subsequent sentencing hearing in 2004 as an aggravating circumstance. Mullins notes that the court accepted the plea agreement, which called for the granting of his petition for post-conviction relief thus setting aside his prior conviction and subsequent sentence. Likening this circumstance to a motion for

[5] Mullins asserts that the offenses in Texas were for "relatively minor felonies". *Appellant's Brief* at 15.

a new trial that has been sustained, Mullins argues that the status of his case became a pending, undecided case, thus wiping his slate clean.

We disagree with Mullins's creative argument. A motion for a new trial that is sustained shows only that the issues have returned to an undecided state. The granting of Mullins's petition for post-conviction relief as part of the plea agreement had the same effect. Such, however, does not nullify the fact that Mullins absconded from Indiana during his first jury trial disappear. Here, the court found the fact that Mullins fled the jurisdiction as reflecting poorly on his character and as evidencing his cavalier attitude toward the court. These are valid considerations. We further note that in addition to this aggravating factor, the court properly considered Mullins's convictions in Texas and the fact that he violated the conditions of his bond as aggravating circumstances and as reflecting poorly on his character. We therefore conclude that it was not improper for the trial court to consider Mullins's conduct in fleeing the State as an aggravating circumstance. *See Thorpe v. State*, 524 N.E.2d 795 (Ind. 1988) (finding that trial court was not precluded from considering defendant's attitude as reflected by the fact that he fled from the court's jurisdiction as an aggravating circumstance in addition to other properly identified aggravating circumstances).

Mullins also argues that his sentence is "manifestly unreasonable" and requests that we exercise our authority under the Indiana Constitution and Ind. Appellate Rule 7(B) to revise his sentence. *Appellant's Brief* at 17. Although Mullins states in his brief that his sentence is "manifestly unreasonable," he correctly sets out the "inappropriateness standard" contained in the current version of App. R. 7(B), effective

January 1, 2001, which provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In reviewing the appropriateness of the sentence imposed, we recognize the special expertise of the trial courts in making sentencing decisions and thus, we exercise with great restraint our responsibility to review and revise sentences. *Scott v. State*, 840 N.E.2d 376 (Ind. Ct. App. 2006), *trans. denied*. We further note that on appeal, the burden is upon the defendant to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073.

As to the nature of the offense, Mullins maintains that his sale of methamphetamine to a confidential informant in July 1999 was a one-time sale to a friend prompted by the friend's request. Whether or not Mullins's version is completely accurate, we agree that there was nothing particularly egregious about the nature of the offense.

Turning to his character, Mullins argues that his sentence should be revised because he is not the worst of the worst offenders. Mullins cites to testimony at the sentencing hearing that he has responded well to his incarceration and that he has been rehabilitated. Testimony at the sentencing hearing indicated that Mullins was unlikely to resume his chronic drug use, that he could become a productive member of society, that he had opportunities for gainful employment upon his release, and that he had the support of family and friends. Mullins also submitted evidence that while incarcerated, he has been making use of the programs offered by the Department of Correction, including

substance abuse, conflict resolution, relationship issues, goal setting, and religious studies.

The trial court acknowledged that Mullins has done well while incarcerated, but discounted the mitigating value finding that his "actions speak louder than words". *Transcript* at 67. The court specifically focused on Mullins's conduct in absconding from the jurisdiction during his first trial. Additionally, the court stressed the fact that within a month of being sentenced to forty years in Indiana, Mullins committed crimes in Texas demonstrating his continued involvement with methamphetamine. Further, Mullins is an admitted methamphetamine user and although he received substance abuse treatment while incarcerated, nothing excuses the fact that he did not seek treatment at any other time. Mullins's actions demonstrate that he puts himself above the law. In light of his character, we cannot say that a twenty-year sentence is inappropriate.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.